IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 3-12-2007

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.No.9247 of 2006
and
WPMP No.10233 of 2006

D.Rathinam .. Petitioner

vs

1.The Secretary to Government
Government of Tamil Nadu
Housing & Urban Development
Department, Fort St. George
Chennai 600 009.
2.The Special Tahsildar
Land Acquisition-II,
Tamil Nadu Housing Board
Nandanam, Chennai 600 035.
3.The Chairman/cum/Managing Director
Tamil Nadu Housing Board
Nandanam, Chennai 600 035.
4.The Executive Engineer &
Administrative Officer
Dr.J.J. Nagar Division
Chennai 600 037. .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus to call for the records and quash the order passed by the first respondent in his letter No.30248/LA I(1)2005-5 dated 22.11.2005 and consequently direct the respondents to reconvey the properties bearing S.No.50/1 Ac.0.54 Nolumbur, Thiruvalluvar District, to the petitioner after receiving the compensation amount with such interest as is legally permissible and put the petitioner in legal possession of the properties.

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For Petitioner : Mr.R.Gururaj

For Respondents : Mr.S.Gopinathan
Additional Government
Pleader for RR1 & 2
Mr.P.S.Raman
Additional Advocate General
assisted by Mr.R.Girirajan
for RR3 and 4

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ORDER

Invoking the writ jurisdiction of this Court, the petitioner has sought for a writ of certiorarified mandamus to quash the orders passed by the first respondent in his letter No.30248/LA I (1)2005-5 dated 22.11.2005, and consequently direct the respondents to re-convey the properties bearing Survey S.No.50/1 Ac.0.54 of Nolambur Village, Thiruvallur District, to the petitioner after receiving the compensation amount with such interest as is legally permissible and put the petitioner in legal possession of the properties.

2.The affidavit in support of the petition along with the grounds and the counter affidavit are perused. The Court heard the learned Counsel for the petitioner, the learned Additional Advocate General for the respondents 3 and 4 and also the learned Additional Government pleader for the respondents 1 and 2.

3.The following facts would emerge as facts admitted:

(a) Pursuant to the approval of acquisition by the Government of Tamil Nadu in G.O.R No.307, Housing and Urban Department, dated 11.12.1975, a total extent of 539.98 acres in Nolambur Village, now Thiruvallur District, was notified for development purposes known as Ambattur Neighbourhood Scheme. Following the notification under Sec.4(1) of the Land Acquisition Act, a declaration was made under Sec.6 in the Government Gazette on 30.12.1978. A notification of cancellation was made by the State Government in the year 1979 relating to the lands in part B of the notification i.e., 372.99 acres out of the total area. Apart from that, another extent of 7.42 acres was also withdrawn from the acquisition from part A lands. The petitioner along with all family members jointly owned a total extent of 2 acres and 99 cents in Survey Nos.62/1 and 62/2 in Nolambur Village which was also the subject matter of the very same acquisition proceedings. One Manonmani Palanisamy, who owned land adjacent to 7.42 acres, which were withdrawn, along with others filed a batch of writ petitions challenging the acquisition and also made a request for the resumption of the properties as they remained unutilized and also differential treatment cannot be given to different owners. Pending such W.P.No.10572/86, Sec.48-B of the Land Acquisition Act was introduced as far as the State is concerned. The petitioner gave representations. This Court disposed of all the writ petitions by an order dated 3.7.1997, giving directions to the Government to dispose of the representations. The Government by its order dated 13.11.1997, declined to grant the request of the petitioners therein for re-transfer. Aggrieved over the same, the said Manonmani Palanisamy filed WP No.18000/97 for a writ of certiorarified mandamus to quash the order and for re-conveyance. On the dismissal of the said writ petition on 22.9.2000, W.A.No.1776/2001 was filed, and the same was allowed by the Hon'ble Division Bench of this Court on 16.11.2001. Quashing the

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proceedings, the Division Bench held that the acquisition proceedings were vitiated on the grounds stated therein and also ordered re-conveyance. The S.L.P. filed by the Housing Board before the Apex Court was dismissed by an order dated 22.2.2002, in SLP (Civil) No.3289/2002. Following the communication made by the first respondent, the third respondent has made re-conveyance of the properties.

(b) Another batch of cases in WP No.11578/2003 by one Annakili and others was also allowed by this Court. All the lands which were the subject matter of original acquisition, related to items in part A. The petitioner along with others gave representations to the respondents 1 to 3 on 10.4.2003, seeking re-conveyance. Since there was no response, they filed WP No.22570/2003. This Court while disposing of the said writ petition by an order dated 12.8.2003, directed the petitioner and his family members to give fresh representation fulfilling the requirements of Sec.48-B of the Land Acquisition Act.

(c) While the matter stood thus, a gazette notification was issued by the Housing and Urban Development (HB5) Department in G.O.Ms.No.254 dated 6.10.2003, bringing about a proposal to deal with the properties acquired by it. On 21.10.2003, the petitioner along with family members gave fresh representations seeking re-conveyance invoking Sec.48-B of the Land Acquisition Act. Since it remained unconsidered, the petitioner filed WP No.395/2004 whereby an interim injunction restraining the auction was given. The respondent on appearance filed a petition to vacate the interim injunction which was rejected by making the interim injunction absolute. While disposing of the writ petition, this Court directed the first respondent to consider the representations of the petitioner pursuant to which the first respondent passed an order on 22.11.2005, stating that allotments have already been made for various purposes and also reiterated that the remaining lands would be auctioned, and no land remained unutilised. Under such circumstances, a necessity arose for the petitioner to file this writ petition before this Court.

4.Advancing the arguments on behalf of the petitioner, the learned Counsel Mr.R.Gururaj would submit that the landed properties of the petitioner and his family members having an extent of 2.99 acres in Survey Nos.62/1 and 62/2 in Nolambur Village, which formed part of the acquisition proceedings, originally belonged to their father Duraisamy Naicker, which would devolve upon the petitioner and other family members; that acquisition was made by the Tamil Nadu Government in the year 1975 for development purposes known as Ambattur Neighbourhood Scheme; that though the said acquisition was made three decades ago, the properties remained unutilised; that in view of the financial crunch, the Government in the year 1979 dropped the scheme by way of a notification, relating to the lands in part B of the notification, which was for an extent of 372.99 acres; that the said cancellation was relating to 2/3rds of the total extent of acquisition; that even after the properties were acquired in part

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A, number of writ petitions were filed; that the writ petition filed by one Manonmani Palanisamy, was dismissed by this Court; and that the Division Bench of this Court emphasising the non-utilization of the properties for more tan two decades and also pointing out the discrimination which, in the opinion of the Court, was unconstitutional, held that the acquisition proceedings were vitiated.

5.Placing reliance on the decision rendered by the Division Bench of this Court in W.A.No.1776 of 2001, the learned Counsel would submit that the State Government has not properly exercised the powers vested under Sec.48-B of the Land Acquisition Act, and thus, the Division Bench has quashed the proceedings; that the said order of the Division Bench has become final since the Civil Appeal filed by the Housing Board before the Apex Court, was dismissed; that one Annakili and others equally filed writ petitions for re-conveyance; that the same was also allowed by this Court; that consequent upon the orders of this Court in those writ petitions, re-conveyance has already been made by the State Government; that it is pertinent to point out that all those lands which have been re-conveyed, were all items in part A of the acquisition proceedings; that the lands which belonged to the family of the petitioner, have got to be re-conveyed by the State in exercise of its powers under Sec.48-B of the Land Acquisition Act, since the lands in question also fell in part A of the acquisition proceedings; that though number of representations were made, at no point of time, they were considered properly; that on every occasion, the petitioner has approached this Court; that on those occasions, there were directions issued for consideration of the same; that it is a matter of surprise to note that while the lands remained untuilised for decades, the impugned notification by the Housing and Urban Development Department was made on 6.10.2003, bringing about an illegal proposal to deal with the properties acquired by it by way of allotment; that the proposed action of the properties by the third and fourth respondents was not only illegal, but also unconstitutional; and that if approved, it would be nothing but permitting the State Government to make unjust enrichment at the expense of the land owners, which cannot have any sanction in law.

6.Added further the learned Counsel that having failed to take any steps to utilise the lands for a period of 30 years, the Housing Board should not be allowed to come with a proposal of allotting the lands; that in such circumstances, the impugned order dated 22.11.2005, as if allotments for various purpose have already been made and the remaining lands would be auctioned, and thus, there was no unutilised lands, was not only false, but also it would run counter to the contents of the counter affidavit filed in WP No.395/2004; that the impugned order is against the very contents of G.O.Ms.No.254 dated 6.10.2003; that no one of the respondents has got any right or power to auction the properties; that the respondents are bound by the order in W.A.No.1776/2001 which was subsequently affirmed by the Apex Court; that if the lands acquired for a specific purpose, are not utilised, the State

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Government in fairness must exercise its powers under Sec.48-B of the Act and re-convey the same; but, it should not be allowed to deal with the lands by way of allotments and making profit out of it; that if either the State Government or the Housing Board is allowed to deal with the properties of the citizens, it would be violative of the constitutional right to property; that under such circumstances, the impugned order of the first respondent has got to be quashed and a direction be given to the respondents to consider the representation and re-convey the properties to the petitioner and members of his family; that the petitioner is ready to repay the compensation along with a reasonable rate of interest; and that on that condition, the Government has got to be directed to re-convey.

7.Contrary to the above contentions, the learned Additional Advocate General would submit that the writ petition itself is not at all maintainable since the petitioner has no locus standi to file the same; that following the procedures contemplated under the Land Acquisition Act, for implementing Ambattur Neighbourhood Scheme, the lands having an extent of 539.98 acres in Nolambur Village, were acquired; that necessary awards were passed for the lands including the land to an extent of 0.54 acres as mentioned in the petition; that the possession of the land was taken over by Tamil Nadu Housing Board (TNHB) from the Land Acquisition Officer in the year 1986 itself; that the lands stood registered in the name of one Duraisamy Naicker as per the revenue records; that he died; that his legal heirs appeared in the award enquiry and necessary compensation was awarded; that since the land was an ancestral property and he had minor children, the award amount was deposited; that the enhanced compensation was also paid by the TNHB in the LAOPs and also in appeal suits in the High Court; that under the circumstances, the land owners having received the compensation originally awarded and also subsequently enhanced, had no right to claim the land; that the petitioner who seeks re-conveyance, is one of the sons of the said Duraisamy Naicker; that as could be seen from the award proceedings, he was one among the interested persons; but, he has not established his right over the property through any legal process; that it is not denied that he is not the only legal heir of the said Duraisamy Naicker; that except the petitioner, the other legal heirs are not parties before the Court, and thus, for those reasons, the petitioner has no locus standi to file this writ petition; that after making payment of the compensation awarded by the lower authority and also by the Court, the entire lands have been developed by the Tamil Nadu Housing Board and also allotted to the general public; that at no point of time, neither the State nor the TNHB has declared that those lands were not required for the housing project; that necessary approvals from the competent authority for making layouts were made; that out of 54 cents in question, 7 cents were allotted for roads, and 47 cents were allotted as residential plots; that the said 7 cents which were allotted for the road portion, were actually handed over to the local body of Villivakkam Panchayat Union as per the layout, for future maintenance; that out of 17 residential plots, 7 plots were

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already allotted and handed over to the allottees as per the approved layout, and they have also taken possession; that in view of the pendency of the proceedings in this Court, the remaining 10 plots were not yet allotted, and thus, it would be quite clear that no lands were unutilised; that the petitioner already filed W.P.No.2184/04 seeking re-conveyance of the land; that this Court has also passed an order on 7.2.2004, directing the authorities to dispose of the representation of the petitioner in accordance with law pursuant to which, the Government have examined the request of the petitioner and have rejected the same by a letter dated 22.11.2005, stating that the lands which have been covered in the approved layout, have been utilised for the purpose for which they were acquired, and thus, the scheme has been implemented as per the approved layout.

8.Placing reliance on a decision of the Apex Court in CA Nos.5928 and 5929 of 2004 (TAMIL NADU HOUSING BOARD V. KEERAVANI AMMAL AND OTHERS), the learned Additional Advocate General would submit that once a piece of land has been duly acquired under the Land Acquisition Act, the land becomes the property of the State which can dispose of the property thereafter or convey to any one, if the land was not needed for the purpose for which it was acquired, only for the market value that might be fetched for the property as on the date of conveyance; and that the doctrine of public trust would disable the State from giving back the property for anything less than the market value.

9.The learned Additional Advocate General further relied upon a decision of the Apex Court reported in (1997) 5 SCC 432 (STATE OF KERALA V. M.BASKARAN PILLAI). He would submit that the land in question measuring 54 cents in respect of which the petitioner seeks re-conveyance, has been covered in the approved layout, and therefore, no question of re-conveyance would arise; that all the lands have been covered in the approved layout; that the plots as per the approved layout, can be disposed of depending upon the requirement of the general public for the particular area; that it is true that some of the lands which were not fit for housing scheme, were withdrawn by the State; but, the land under the reference has not been withdrawn from the scheme; that moreover, the original land owners have received the compensation and enhanced compensation also; that apart from that, the lands have been utilised as per the approved layout, for the purpose for which it was acquired; that under the circumstances, the land under reference has been neither dropped from the land acquisition proceedings nor declared as it was not required at any point of time; but, on the contrary, they have been utilised; that the contention of the petitioner that number of writ petitions were already filed by the individual owners and the re-conveyance has also been ordered does not carry any merit for the simple reason that each case was decided by this Court on the merits of that case; that under the circumstances, the decisions arrived at by this Court in those cases, cannot be applied to the present facts of the case; that in the present case, the petitioner requested re-conveyance of the land under Sec.48-B of the Land Acquisition

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Act; but, Sec.48-B is applicable to the lands which were actually vested in the Government; that if it was not required for the purpose for which it was acquired or for any public purpose, then only the Government can consider the transfer of such land to the original owner, who was willing to repay the amount paid to him as per the provisions of that Act; that in the case on hand, the provisions of Sec.48-B cannot be applied for the simple reason that all the lands are covered in the approved layout, and therefore, no question of non-utilisation of the land would arise.

10.The learned Additional Advocate General would further add that the petitioner has no vested right to claim re-conveyance or ask for a direction to the State to exercise its powers under Sec.48-B of the Land Acquisition Act; that it was purely discretionary on the part of the State and that discretion can also be exercised if the acquired land was not required for the purpose for which it was acquired; that even assuming the contention of the petitioner that it was originally acquired for the purpose of construction of houses under Ambattur Neighbourhood Scheme is true, the petitioner cannot ask the relief of re-conveyance if the land which was acquired, was required for any other public purpose; that Sec.2(9) of the Tamil Nadu Housing Board Act, 1961, defines "Housing or improvement scheme" which means a scheme framed under this Act, and includes any one other types of schemes referred to in Section 40; that Sec.40 of the Act stipulates the types of housing or improvement schemes; that it reads that any housing or improvement scheme shall be of one of the following types or combination of any two or more such types or of any special features thereof, that is to say (a).... (g) a land development scheme; that defining the land development scheme, Sec.47 stipulates that (1) Whenever the Board is of the opinion that it is expedient to provide building sites in any area, the Board may frame a land development scheme; (2) Such scheme shall specify the proposed layout of the area to be developed and the purpose for which particular portions thereof are to be utilized; and (3) The Board may provide for roads, streets, open spaces, drainage, water supply and street – lighting and other amenities for the scheme area; that it is quite clear that under the land development scheme as envisaged under the provisions of the Act, the lands in question were the subject matter of approved layouts, and they were also allotted to the general public; that under the circumstances, the TNHB had the legal sanction to do so; that once it comes under the land development scheme, allotting approved layouts to general public, which cannot, but be a public purpose, no question of exercising the discretion by the State for re-conveyance of the said land would arise; that under the circumstances, the writ petition does not carry any merit whatsoever, and hence, it has got to be dismissed.

11.Admittedly, an extent of 2 acres 99 cents which belonged to one Duraisamy Naicker, the father of the petitioner, was one of the items in part A of the acquisition proceedings made and published by the State in Tamil Nadu Government Gazette on

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31.12.1975. Out of the total area of 539.98 acres, the Government issued a notification of cancellation of part B extending to an area of 372.99 acres. A batch of writ petitions were already filed by different individual owners of the lands which were shown as different items of the acquisition proceedings under part A, and the land in question also fell in part A of the notification. On the earlier occasions, the petitioner filed writ petitions before this Court referred to supra, seeking direction to the State to consider his representations for re-conveyance. On 6.10.2003, G.O.Ms.No.254 was made by the Housing and Urban Development Department bringing about a proposal to deal with the properties acquired by it. A writ petition was filed by the petitioner in WP No.17492/2004 seeking re-conveyance of the lands. An order came to be passed by this Court on 22.7.2005, directing the Government to pass appropriate orders on it, pursuant to which the impugned order dated 22.11.2005, rejecting the request of the petitioner for re-conveyance, was made by the State stating that the lands were covered in the approved layout and utilised, and in this way, this writ petition has arisen.

12.Before adverting to the questions in controversy, it would be fit, appropriate and advantageous to make mention of the settled legal position which is relevant for the purpose of the case. In exercise of the powers of imminent domain, the Government acquires the land following the procedural formalities as envisaged under the provisions of the Central Act. The Collector of the said District is empowered to take possession of the land in respect of which award was passed under Sec.11 of the Act, and consequently, the land so acquired, shall vest in the Government free from all encumbrances. Under Sec.17 of the Central Act, in the case of urgency and pursuant to the directions of the appropriate Government, the Collector concerned, though not an award was passed following the publication of notice as contemplated under Sec.9, shall take possession of the land needed for specific public purpose, following which the said land would vest absolutely in the Government free from all encumbrances. Sec.17-A was introduced to the Central Act in order to enable the Government to hand over possession of the land so acquired to the Tamil Nadu Housing Board. According to Sec.17-A, which speaks of transfer of land to Board in every case which falls under Sec.16 or 17, the Collector shall, upon payment of cost of acquisition, make over charge of the land to the Board, and thereupon, the land shall vest in the Board subject to the liability of the Board to pay any further cost which might be incurred on account of its acquisition. Thus, the lands handed over to the Board by the Collector, shall vest in the Board. The Board which is constituted under Sec.4 of the Tamil Nadu Housing Board Act, 1961, has to undertake housing or improvement scheme in view of the powers accorded to the Board under Sec.35. Under Sec.35, the Board can undertake the works of execution of housing or improvement schemes or the Government can transfer such housing or improvement scheme though not provided under the Act, and also the Board on such terms and conditions, can take over the execution of the housing or improvement scheme undertaken by a local authority.

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In addition to the above, the Government for the purpose of clearance or improvement of any slum area, can transfer any land in such area belonging to or vested in the State, to the Board with specific purpose. In the entire scheme of the Housing Board Act, nowhere the Board is empowered to acquire any land for any purpose. But, on the contrary, the main duty of the Board is to frame the housing or improvement scheme only in and on the area which would vest by way of transfer of land as contemplated under the Act. The Board may forward such proposal on a scheme framed by it for a specific purpose. On acceptance of the proposal, the State in exercise of its sovereign power, alone can acquire a specific extent of the property of the individuals after following the procedural formalities under the Land Acquisition Act.

13.Sec.16 of the Land Acquisition Act reads thus:

> "16.Power to take possession:- When the Collector has made an award under Section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances."

14.By employing the word "vest", the legislative intent is made clear that it is not only taking mere possession of the land, but it would confer title on the Government free from all encumbrances. At this juncture, it is pertinent to point out that the Tamil Nadu Housing Board cannot claim that the use of the word "vest" in Sec.72 of the Tamil Nadu Housing Board Act would confer title over the same, since the very object of the constitution of the Tamil Nadu Housing Board as could be seen from the said enactment, was to enable the Board to frame the housing or improvement scheme and execute such scheme. Thus, it would be quite clear that the use of the word "vest" in Sec.72 of the Tamil Nadu Housing Board Act is only with the limited purpose. Merely because the word "vest" is employed in Sec.72 of the Act, it cannot be construed or equated to the act of vesting of the land in the Government as understood under Sec.16 of the Central Act. The vesting of the land in the Government under Sec.16 of the Central Act is one absolutely free from all encumbrances. But, the vesting under Sec.72 of the Tamil Nadu Housing Board Act was only for the limited purpose.

15.At this juncture, Sec.16-B of the Tamil Nadu Amendment Act 1996, speaking of the land to be forfeited in certain cases, becomes more relevant. Sec.16-B of the Tamil Nadu Amendment Act 1996 reads as follows:

> "16-B.Land to be forfeited in certain cases:- Where the Government are satisfied that the land acquired under this Act for any public purpose as referred to in sub-section (1) of Section 4 is not used for the purpose for which it was acquired, they may, by an order, forfeit the land as penalty and the land shall vest in the Government in Revenue Department free from all encumbrances."

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The very object of introducing the above provision was to restrain or prevent the requisitioning bodies from transferring the acquired lands or any part thereof by way of sales, mortgage, gift, etc., without the prior permission of the Government.

16.In the instant case, the properties in question were acquired in the year 1975 on the requisition made by the Housing Board. It is not in controversy that the possession of the lands in question on such acquisition, were taken by the State and handed over to the Board for the specific purpose of Ambattur Neighbourhood Scheme. It is admitted by the respondents' side that the entire lands were acquired for the purpose of constructing houses under the said scheme. It is not the case of the respondents that pursuant to the implementation of the scheme, houses were constructed. Thus, it would be quite clear that though the lands were acquired and possession was taken by the Government and handed over to the Board, the scheme was not implemented in the decades past. It can be well stated that the lands acquired under the provisions of the Land Acquisition Act, for the specific purpose of Ambattur Neighbourhood Scheme, were not used for the purpose for which they were acquired.

17.Now, the contention put forth by the State that it was never declared that the land was not required; but, the land has been utilised by approving layout cannot be countenanced. At no stretch of imagination, the Tamil Nadu Housing Board can have shelter under Sec.72 of the Act to say that it can dispose of the unutilised lands by itself in exercise of the powers therein. If such a contention has got to be accepted, it would defeat the object and the purpose of amending the provision under Sec.16-B of the Tamil Nadu Amendment Act, 1996. At this juncture, it would be more apt and appropriate to reproduce the following part of the judgment of the First Bench of this Court made in W.A.Nos.443 to 445 and 485 to 487 of 2006 and reported in 2006 (4) CTC 290 (R.SHANMUGAM AND OTHERS V. THE STATE OF TAMIL NADU).

> "20.It must be kept in mind that the Housing Board was constituted only for framing and implementing Housing and Improvement Schemes. Incidentally, it is also conferred with the power to dispose such land or houses to eligible buyers at the affordable market price. The legislature never intended to confer a power on the Housing Board to frame schemes and to make profit out of such schemes."

18.Admittedly, the property in question originally belonged to Duraisamy Naicker whose son is the petitioner before this Court. There cannot be any impediment in law for the petitioner to file this writ petition. As could be seen above, all the writ petitions filed by the petitioner, ended with the direction to the Government to consider his representation for re-conveyance as per Sec.48-B of the Land Acquisition Act. In order to exercise the

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powers under Sec.48-B of the Act, three conditions must exist namely the possession must vest with the Government, the land must be available for re-conveyance and the owner of the land must express his willingness to repay the amounts paid to him under the Act for the acquisition of such land, inclusive of the amounts referred to under Sec.23 of the Act, if any paid under the Act. The contention put forth by the respondents' side that the powers vested under Sec.48-B, are discretionary, and hence, the petitioner cannot compel the State to re-convey the properties cannot be countenanced. In the instant case, all the representations made by the petitioner, have been rejected by the Government mechanically, stating that the entire property has been utilised. From the very reading of the counter filed, it would be quite clear that the rejection should have been made on the report given by the Tamil Nadu Housing Board stating that no part of the land remained unutilised; but, they were utilised in entirety. It is also abundantly clear from the counter that out of 54 cents, 7 cents were allotted for the purpose of roads; that possession was handed over to Villivakkam Panchayat Union; that the remainder 47 cents were put to layouts; that out of 17 plots, 7 have been allotted to the allottees, and the remaining 10 could not be allotted in view of the pending proceedings in this Court. In view of the legal positions as stated above, the respondent Housing Board is only to frame and implement the scheme on the area of the landed property acquired and vested with the State and handed over to the Board for that purpose. But, it has no power to make layouts and dispose of the same to the third parties. "Whether the land is required for any other public purpose" has got to be decided by the Government and not by the Housing Board. Hence, the contention of the TNHB that the land in question has been made as approved layouts, and it has got powers to deal with the same, and it would also fell within "other public purpose" cannot be countenanced in law. Thus, it would be quite clear that the State had no occasion to consider the representations made by the petitioner and to take a decision whether the discretion available to the State under Sec.48-B of the Act has to be exercised in favour of the petitioner or not.

19.It is true that the right to property of an individual though not a fundamental right, is protected by the Constitution. Also true it is that the citizen whose property was already acquired and vested with the State, has no vested right to ask for re-conveyance. But, he is entitled to make a request to the Government for re-conveyance of the land, and the Government can also consider the request and exercise the discretion in his favour if the conditions as envisaged under Sec.48-B of the Act, do exist. Merely because the citizen has no vested right to ask for re-conveyance, it cannot be stated that he cannot have a right of representation to make a request. If such a contention put forth by the respondents' side is accepted, the very purpose, object and reasons for which Sec.48-B, a unique provision has been made, would be defeated. A Division Bench of this Court had an occasion to consider the request like this, in W.A.No.1776 of 2001 and found that it is a fit case for re-conveyance. Even the

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S.L.P. filed by the Housing Board has been dismissed by the Apex Court. In such circumstances, no impediment is felt by the Court in issuing direction to the Government to consider the re-conveyance of the land under Sec.48-B of the Act.

20.In the instant case, it would be quite clear that the land acquired and possession of which was handed over to the Tamil Nadu Housing Board was not used for the said purpose. Thus, the lands, under such circumstances, are forfeited by the Government, and it could be utilised by the Government for any other public purpose. If the Government is of the opinion that the lands are not required for any other public purpose, then, it has to necessarily consider the request of the owner for re-conveyance of the land as envisaged under Sec.48-B of the Act. If the Government is of the view that the discretion cannot be exercised in favour of the petitioner to re-convey the land, then it could resort to dispose of the land by public auction.

21.For the reasons stated above, this Court is of the firm view that the impugned order of the first respondent dated 22.11.2005 has got to be quashed. Accordingly, it is quashed. The petitioner is permitted to make a fresh representation within a period of eight weeks herefrom, and the Government is also directed to consider the representation in the light of the observations made above and dispose it of in accordance with law as expeditiously as possible preferably within a period of twelve weeks therefrom. This writ petition is, accordingly, disposed of. No costs. Consequently, connected WPMP is closed.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

To:

1.The Secretary to Government
Government of Tamil Nadu
Housing & Urban Development
Department, Fort St. George
Chennai 600 009.

2.The Special Tahsildar
Land Acquisition-II,
Tamil Nadu Housing Board
Nandanam, Chennai 600 035.

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3.The Chairman/cum/Managing Director
Tamil Nadu Housing Board
Nandanam, Chennai 600 035.

4.The Executive Engineer &
Administrative Officer
Dr.J.J. Nagar Division
Chennai 600 037.

+ 1 cc to Mr. R. Girirajan, Advocate, SR No.71432

+ 1 cc to Mr. R. Gururaj, Advocate, SR No.71357

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